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OFFICE OF PETITIONS

In re Application of :
Kawakami et al. :
Application No. 10/790,699 : **DECISION ON PETITION**
Filed: March 3, 2004 :
Attorney Docket No. 60188-792 :

This is a decision on the petition, filed January 16, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The above-identified application was held abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed August 26, 2008, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on November 27, 2008. A Notice of Abandonment was mailed on December 19, 2008.

Petitioner asserts that the Office action dated August 26, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

A Petition to Withdraw the Holding of Abandonment does not require a petition fee and none has been charged.

In view that petitioner has already paid the issue fee and the publication fee, this matter is being referred to the Office of Data Management for processing into a patent.



Liana Walsh
Petitions Examiner
Office of Petitions